

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**JEREMY RODRIGUEZ-ORTEGA AND
JOSHUA RODRIGUEZ,**
Plaintiffs,

v.

No. 1: 21-cv-01129-JCH-KK

DAVID RICH, KENNETH LUCERO,
in their official and individual capacities, L. TERESA
PADILLA, in her individual capacity,
AND NEW MEXICO DEPARTMENT OF HEALTH
Defendants,

AFFIDAVIT OF JEREMY RODRIGUEZ-ORTEGA

1. My name is Jeremy Rodriguez-Ortega. I am over 18, and I am competent to give the testimony stated herein.
2. The information provided herein is within my own personal knowledge.
3. I worked for State of New Mexico for over 18 years.
4. On February 21, 2020, I was hospitalized and incapacitated by my intermittently disabling health conditions. I returned to work on Monday, March 2, 2020.
5. Just after my return to work, David Rich and L. Teresa Padilla met with me to discuss my health and its effect on my job. At no time were there any allegations about my work performance, only my absences affecting my job. They told me that it was unacceptable that I had not called in every day in compliance with the DOH call in procedure. They told me that I could be disciplined for up to a 5 day suspension for the AWOLs during my time out of the office because of my health conditions. They

told me that I would be marked AWOL, and subject to discipline up to and including termination if I did not follow the call-in procedures in future. They told me that in lieu of discipline for my AWOLs, they were reassigning my job duties and my only responsibility going forward was to qualify for disability retirement.

6. As I did not have a current FMLA certification, I was given FMLA forms to take to my doctors so that I could be approved for FMLA.
7. The Covid pandemic had not yet begun, and no one was teleworking at the time of this meeting.
8. Once the stay at home order was issued and teleworking began, I received no communications from David Rich or any of my coworkers. No one called, texted or emailed me, and I received no assignments.
9. I continued to log on every day to the VPN service and believed I was logged into the email system.
10. My condition causes me excruciating pain, and so requires heavy medication including narcotic painkillers which I only take during these flareups.
11. I did not take narcotic pain medication while I was working.
12. Between May 4 and May 15 I sought emergency medical care and was hospitalized several times. I was in excruciating pain and suffered multiple debilitating symptoms. I don't remember much about this period because I was mostly unconscious.
13. In May 2020, hospitals were in crisis due to the covid pandemic. There were not enough hospital beds and I was and am extremely high risk of complications from covid.

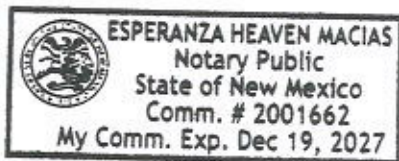
14. The hospital needed all the beds they could get for Covid, and so I was told I was not kept in as long as I might normally have been and was discharged even while still being very sick.
15. My medical conditions and flareups of it do not cause me to be completely blind, mute or unable to physically dial a phone, but do cause me to be extremely confused and unable to form coherent thoughts, and am generally unconscious and/or unaware of the passage of time due to the condition and/or the treatment thereof.
16. David Rich called me for the first time in months on May 15, 2020. I had just been released from the hospital. I remember him screaming at me and telling me that I was going to be disciplined for not being at work. I tried to tell him I had been in the hospital but he wouldn't listen to anything I was saying.
17. I was completely unaware that my email password had expired until May 15, 2020 because I had not received any communications while I had been teleworking. I immediately called the help desk and resolved the problem after David Rich brought it to my attention.
18. David Rich told me I could not invoke FMLA if I had not called in to work each day that I was absent, regardless of the reason. I believed him until I sought legal counsel after my termination.
19. I was terrified of being fired for being absent while I was sick and so I lied to try to keep my job. I told David Rich that I had been teleworking when I was really in the hospital and/or incapacitated by my medical conditions.

I declare under penalty of perjury that the foregoing is true and correct.

Jeremy Rodriguez-Ortega

STATE OF NEW MEXICO)
)SS.
COUNTY OF SANTA FE)

Signed, sworn to and acknowledged before me this 26th day of March, 2024 by Jeremy
Rodriguez Ortega.



Emacias

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